

MONTANA LEGISLATIVE HISTORY

Chapter 194 19 99

Bill H 615 S _____

Original bill & history X C

H. Committee on BUSINESS & LABOR

Hearing Date(s) 2/16 X C

EXEC. ACTION 2/17 X C

_____ C

_____ C

Date Out _____ C

S. Committee on BUSINESS & INDUSTRY

Hearing Date(s) 3/10 X C

EXEC. ACTION 3/11 X C

_____ C

_____ C

Did this bill originate in an interim committee? ____ Yes X No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

Montana
Legislative
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Montana Legislature

Detailed Bill Information



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Bill Draft Number: LC1616

[Current Bill Text](#)

Bill Type - Number: HB 615

Short Title: Revise laws governing beer and wine franchise agreements

Primary Sponsor: Dan Harrington

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 42

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	03/30/1999			
(H) Signed by Governor	03/26/1999			
(H) Transmitted to Governor	03/22/1999			
(S) Signed by President	03/18/1999			
(H) Signed by Speaker	03/18/1999			
(C) Sent to Printing	03/17/1999			
(H) Returned from Enrolling	03/16/1999			
(H) Sent to Enrolling	03/16/1999			
(S) Returned to House	03/15/1999			
(S) 3rd Reading Concurred	03/15/1999	49	0	
(C) Sent to Printing	03/15/1999			
(S) Scheduled for 3rd Reading	03/15/1999			
(S) 2nd Reading Concurred	03/13/1999	42	0	
(S) Scheduled for 2nd Reading	03/13/1999			
(S) Committee Report--Bill Concurred	03/11/1999			(S) Business and Industry
(S) Committee Executive Action--Bill Concurred	03/11/1999	7	0	(S) Business and Industry
(S) Hearing	03/10/1999			(S) Business and Industry
(S) Referred to Committee	02/23/1999			(S) Business and

				Industry
(S) First Reading	02/23/1999			
(H) Transmitted to Senate	02/22/1999			
(H) 3rd Reading Passed	02/22/1999	94	5	
(H) Scheduled for 3rd Reading	02/22/1999			
(H) 2nd Reading Passed	02/20/1999	91	6	
(H) Scheduled for 2nd Reading	02/20/1999			
(H) Committee Report--Bill Passed	02/18/1999			(H) Business and Labor
(H) Committee Executive Action--Bill Passed	02/17/1999	18	0	(H) Business and Labor
(H) Hearing	02/16/1999			(H) Business and Labor
(C) Introduced Bill Text Available Electronically	02/12/1999			
(H) Referred to Committee	02/12/1999			(H) Business and Labor
(H) First Reading	02/12/1999			
(H) Introduced	02/12/1999			
(C) Draft Delivered to Requester	02/10/1999			
(C) Draft Ready for Delivery	02/09/1999			
(C) Draft in Assembly/Executive Director Review	02/09/1999			
(C) Draft in Final Drafter Review	02/09/1999			
(C) Bill Draft Text Available Electronically	02/09/1999			
(C) Draft in Input/Proofing	02/09/1999			
(C) Draft to Drafter/Edit Review (CAJ)	02/09/1999			
(C) Draft in Edit	02/09/1999			
(C) Draft in Legal Review	02/08/1999			
(C) Draft to Requester for Review	02/06/1999			
(C) Draft Request Received	01/14/1999			

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Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Harrington	Dan	

Drafter	Heiman	Lee	
Primary Sponsor	Harrington	Dan	

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Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Alcohol and Drugs		Simple	ALC
Trade Regulations and Competition		Simple	TRAD

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Additional Bill Information

Probable Fiscal Note: No

Preintroduction Required: N

Session Law Ch. Number: 194

DEADLINE

Category: General Bills

Transmittal Date: 02/24/1999

Return (with 2nd house amendments) Date: 04/01/1999

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Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-99	

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12/28/2004 09:25 AM Mountain Time

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1 House BILL NO. 615
2 INTRODUCED BY Harmon Ryan Steve Menachery Mark
3 Julien Gonsky Halima Chowdhury Garth Keenan
4 (Primary Sponsor)

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MANDATORY PROVISIONS IN AGREEMENTS
6 BETWEEN BREWERS OR BEER IMPORTERS AND BEER WHOLESALERS AND BETWEEN TABLE WINE
7 SUPPLIERS AND DISTRIBUTERS; AND AMENDING SECTIONS 16-3-222 AND 16-3-416, MCA."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 Section 1. Section 16-3-222, MCA, is amended to read:

11 "16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts,
12 agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler
13 or a beer importer and a wholesaler ~~shall~~ must specifically set forth or contain the following:

14 (1) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer
15 importer and the wholesaler involved mutually shall determine the size or extent of the area in which the
16 wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. Said
17 The territory will must be the territory agreed upon between the wholesaler and brewer or the wholesaler
18 and beer importer and may not be changed without the mutual consent of both the wholesaler and brewer
19 or the wholesaler and beer importer.

20 (2) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

21 (3) that the brewer or beer importer recognizes that the wholesaler is free to manage his the
22 wholesaler's business in the manner that the wholesaler ~~deems~~ considers best and that this prerogative
23 vests in the wholesaler the exclusive right to establish selling prices, to select the brands he that the
24 wholesaler wishes to handle, and to determine the effort and resources that the wholesaler will exert to
25 develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;

26 (4) a procedure for the review of alleged wholesaler deficiencies, including the submission in
27 writing to the wholesaler by the brewer or beer importer of ~~said the~~ said the deficiencies, if the deficiencies are
28 susceptible of correction and if the wholesaler desires to correct ~~said the~~ said the deficiencies, and that a
29 reasonable period of time ~~shall~~ must be given the wholesaler for rectification of ~~said the~~ said the deficiencies prior
30 to any notice of intent to terminate;

1 (5) a termination clause providing that the brewer or beer importer shall deliver, in writing, to the
2 wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise;

3 (6) that all agreements between a brewer and a wholesaler are interpreted and governed by the
4 laws of Montana;

5 (7) that in any dispute resulting in litigation between a brewer or a beer importer and a
6 wholesaler, the litigation must occur in a Montana court, either federal or state, unless that forum would
7 create an unreasonable burden on any party, as determined by the court in which the litigation is
8 commenced;

9 (8) that all agreements between a brewer or a beer importer and a wholesaler must recognize the
10 constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution."
11

12 **Section 2. Section 16-3-416, MCA, is amended to read:**

13 **"16-3-416. Table wine distributor provisions. (1) A supplier or table wine distributor must have**
14 **a written agreement of distributorship that provides for purchase of the supplier's products from the**
15 **supplier by the table wine distributor.**

16 **(2) An agreement of distributorship must provide that:**

17 **(a) a supplier shall notify a table wine distributor in writing at least 60 days prior to termination**
18 **of an agreement of distributorship unless a termination without notice is permitted as provided in**
19 **16-3-417. The written notice must state the reasons for termination. Notice of termination is void if**
20 **within 60 days of the notice, the table wine distributor rectifies the deficiency stated as the reason for**
21 **termination and if the deficiency was not stated as reason for termination in a notice previously voided**
22 **under the provisions of this subsection.**

23 **(b) a supplier may not unreasonably withhold or delay approval of a sale or transfer of the**
24 **ownership, management, or control of a table wine distributorship. However, a table wine distributor shall**
25 **give a supplier no less than 60 days' prior written notice of any material change in ownership,**
26 **management, or control.**

27 **(3) Within 60 days after entering into an agreement of distributorship, the supplier shall advise**
28 **the department of the agreement by filing a copy of the agreement that must include the sales area or**
29 **areas designated for the table wine distributor.**

30 **(4) If a supplier terminates an agreement of distributorship under the provisions of subsection**

1 (2)(a), the table wine distributor subject to the termination is entitled to compensation for the laid-in cost
2 of inventory. In the event of any termination of the agreement by the supplier other than termination for
3 good cause or for any reason set forth in 16-3-417(3), the distributor is entitled to compensation for the
4 laid-in cost of inventory and to liquidated damages based on the sales of the brand or brands involved,
5 as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount
6 of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed
7 under subsection (5) of this section.

8 (5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of
9 distributorship for a legitimate business reason not within the definition of good cause if an arbitrator
10 appointed by the department finds, after hearing the supplier and the table wine distributor, that the
11 termination is in the best interest of the table wine brand concerned. Arbitration under this section must
12 be conducted under the provisions of Title 27, chapter 5.

13 (6) All agreements of distributorship are interpreted and governed by the laws of Montana.

14 (7) In any dispute resulting in litigation between a supplier and a distributor, the litigation must
15 occur in a Montana court, federal or state, unless that forum would create an unreasonable burden on any
16 party, as determined by the court in which the litigation is commenced.

17 (8) Agreements between a supplier and a distributor must recognize the constitutional right to
18 a jury trial as set forth in Article II, section 26, of the Montana constitution.

19 ~~(7)(9)~~ A provision in an agreement of distributorship that is inconsistent with the requirements
20 of this section is void."

21 - END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on February 16, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 603, HB 604, HB 611, HB 598,
HB 624, HB 618, HB 615, HB
598, HB 615, HB 592,
2/12/1999
Executive Action: HB 355, HB 598

Closing by Sponsor: Rep. Quillico closed.
{Tape : 2; Side : A; Approx. Time Counter : 43 - 50}

HEARING ON HB 615

Opening Statement by Sponsor: Rep. Harrington introduced HB 615.
{Tape : 2; Side : A; Approx. Time Counter : 50 - 115}

Proponents' Testimony: Kristi Blazer, Montana Beer and Wine
Wholesalers. EXHIBIT(buh38a07)
{Tape : 2; Side : A; Approx. Time Counter : 115 - 150}

Ed Brandt, Cardinal Dist. Bozeman
{Tape : 2; Side : A; Approx. Time Counter : 150 - 261}

John Decker, Briggs Dist
{Tape : 2; Side : A; Approx. Time Counter : 261 - 355}

Chad Gadbot, Mile Hi Beverages, Butte
{Tape : 2; Side : A; Approx. Time Counter : 355 - 429}

Robert Zicone, Zeke's Dist EXHIBIT(buh38a08) EXHIBIT(buh38a09)
EXHIBIT(buh38a10)
{Tape : 2; Side : A; Approx. Time Counter : 429 - 466}

Bob Pavlovich
{Tape : 2; Side : A; Approx. Time Counter : 466 - 470}

Opponents' Testimony: Mona Jamison, Wine Dist Ins.
{Tape : 2; Side : A; Approx. Time Counter : 470 - 500}
{Tape : 2; Side : B; Approx. Time Counter : 0 - 46}

Questions from Committee Members and Responses: Reps. Pavlovich,
Stovall, Bookout, and Lawson question witnesses
{Tape : 2; Side : B; Approx. Time Counter : 46 - 152}

Closing by Sponsor: Rep. Harrington closed
{Tape : 2; Side : B; Approx. Time Counter : 152 - 190}

HEARING ON HB 618

Opening Statement by Sponsor: Rep. Ahner introduced HB 618.
{Tape : 2; Side : B; Approx. Time Counter : 190 - 200}

Proponents' Testimony: Bud Cobb, plumbers union EXHIBIT(buh38a11)
{Tape : 2; Side : B; Approx. Time Counter : 200 - 243}

Bill Drafting Request

Montana Legislative Services Division
 Room 138 — State Capitol
 Helena MT 59620-1706
 (406) 444-3064
 FAX: (406) 444-3036
 e-mail: gpetesch@mt.gov

EXHIBIT 7DATE 2/16/99HB 615

For Legislative Services Division Use Only:

Date of Request 1

Requestor _____

(Please Print)

Description of Request*(Must be specific)*

Revise the beer and wine franchise laws to re-state within those statutes certain protections found elsewhere under Montana law.

Specifically, the requested revisions affect Mont. Code Ann. § 16-3-222 which sets forth the mandatory provisions for beer wholesaler contracts, and Mont. Code Ann. § 16-3-416 which sets forth mandatory provisions for table wine distributor contracts.

The proposed revisions will add three protections found at other places in Montana law:

- 1) Interpretation.
 The agreements are to be interpreted according to Montana law. Casarotto v. Lombardi, 886 P.2d 931 (Mont. 1994) *rev'd on other grounds* 134 L. Ed. 902 (1996).
- 2) Forum.
 Disputes are to be litigated in Montana. Mont. Code Ann. § 28-2-708; State ex rel. Polaris Indus. v. District Court, 695 P.2d 471 (Mont. 1985); Rindal v. Seckler Co., Inc. 786 F. Supp. 890 (D. Mont. 1990).
- 3) Right to Jury Trial.
 Wholesalers or Distributors cannot be forced to waive their right to a jury trial. Mont. Const., art. II, § 26; Moore v. Capital Gas Corp., 58 P.2d 302 (Mont. 1945).

As an added benefit, the requirements will be the same under both the beer franchise laws and the wine franchise laws.

Dan Harrington
 Requesting Legislator

 Requesting Agency

Authority to contact anyone felt necessary

YES

NO

Contact Person(s):

Name(s) _____

Phone(s) _____

EXHIBIT 8
DATE 2/16/99
HB 615

BEER AND WINE TAXES PAID BY WHOLESALERS

1997

1998

Beer Tax \$3,345,421.47

\$3,427,183.82

Wine Tax \$1,592,017.95

\$1,594,040.63

Cider Tax \$ 1,007.91

\$ 4,362.53



MAJESTIC MARKETING GROUP, LTD

AKA Kendall Jackson

EXHIBIT 9
DATE 6/2/16/99
HB 615

January 4, 1994

Mr. Brian Smith
FUN BEVERAGE
4541 Highway 93 South
Kalispell, MT 59901

Dear Brian:

Enclosed is a contract offering to appoint your company as a La Crema Distributor. Please fill in Exhibit A with the name of the brand manager who will be handling La Crema. Please review this contract, sign it and return it to our office. The agreement shall be effective only after La Crema has approved and executed the document on its return by you to our Santa Rosa office. Please note that the contract will not be approved if altered in any way.

We will be able to ship you product immediately after receipt and approval of the signed contract in our office. Our local Majestic Marketing Sales Representative will be contacting you to handle any needs that you have or answer any questions.

Thank you, and we look forward to a long, profitable relationship with you.

Sincerely,



Kenneth O'Farrell
President

cc: Michael Haarstad
Sol Varon

KOF/agr

Kendall Jackson Wine

parties' choice of California law to govern, construe and resolve disputes by arbitration under this Agreement.

24. Governing Law.

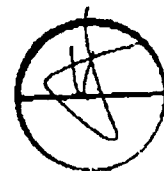
This Agreement is to be governed and construed in accordance with the laws of the State of California and any disputes or controversies arising in connection herewith, shall be resolved under California law. Any controversy, dispute or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in San Francisco, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association and in accordance with the substantive rules of California law. Further, the rights of the parties hereto and the powers and duties and jurisdiction of the Arbitrator(s) hereunder shall be subject to, and coextensive with the rights, powers and duties and jurisdiction provided under California law. The award rendered by the Arbitrator(s) shall be final and binding, and judgment on said award may be entered in any court having jurisdiction thereof. Each party shall bear its own costs and fees of arbitration. All such disputes or controversies shall be arbitrated under the rules of the American Arbitration Association.

25. Waiver.

The failure or omission by either party to insist upon or enforce any of the terms of this Agreement shall not be deemed a waiver of such term unless the waiver is in writing and signed by the party against whom such waiver is sought to be enforced. Waiver of any one term shall not be deemed a waiver of any other.

- (i) All outstanding invoices due and owing to Company have been paid in full;
 - (ii) Such orders are in accord with past purchasing practices;
 - (iii) Such orders are scheduled for delivery prior to the effective date of termination; and
 - (iv) Such orders shall be sufficient to satisfy only Distributor's immediate needs consistent with past performance, for the Products in the Area for sales and delivery prior to the date of termination and not thereafter.
- c. The Company may, at its option and in its sole discretion, within thirty (30) days of the effective date of expiration or termination, repurchase at Distributor's laid-in cost its inventory of the Products and/or point-of-sale material for the Product purchased by Distributor, less any sums for payments Distributor owes to Company.
- d. Distributor shall promptly release and deliver to the Company all point-of-sale material for the Product in its possession that the Company furnished without charge.
- e. Both parties warrant and covenant that, upon expiration or termination, neither party will make any statements or take any action to impair or diminish the reputation, goodwill or business of the other party.
9. **Trademarks.** Company grants to Distributor the non-exclusive right to sell and distribute the Products bearing the trademarks (the "Trademarks") in the Area, and to otherwise use the Trademarks solely in connection with Distributor's sale and distribution of the Products. Distributor expressly acknowledges that such trademarks are the exclusive property of the Company. Distributor's use of the Trademarks shall be in good taste and not be denigrating in any way to the Company or the Trademarks. Distributor may not use any of the Trademarks in any form of advertising without the Company's prior consent except for bottle mats and cuts of Products provided by the Company. Upon termination of this agreement, Distributor shall immediately cease all use of such Trademarks.
10. **Distributor's Prices.** Prices charged by Distributor and credit terms, if any, offered by Distributor are within Distributor's sole discretion. The Company may from time to time make recommendations on any phase of Distributor's business of selling the Products, including pricing.
11. **Choice of Law; Arbitration.**
- a. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington applicable to contracts made and to be performed in that State, without giving effect to the principles of conflicts of laws and without giving effect to the provisions of Washington "Wholesale Distributor/Supplier Equity Agreement Act" or any other similar provisions presently in effect or subsequently enacted in the State of Washington.
 - b. In the event any disagreement or dispute between the parties arises out of this Agreement, such disagreement or dispute shall be submitted to binding arbitration before the Seattle, Washington office of Judicial Arbitration and Mediation Services, Inc. ("JAMS") unless the parties mutually agree upon an alternative dispute resolution service. The arbitration shall be conducted in accordance with the rules of JAMS or such other dispute resolution service as might be agreed upon and shall be held in Seattle, Washington. Any award made by JAMS or such other dispute resolution service as might be agreed upon shall be binding upon the parties. Arbitration shall be the exclusive remedy for breach or termination or expiration disputes arising out of this Agreement by either party. The parties shall share equally all costs of arbitration other than representation by counsel which shall be at each party's own expense.

Canandaigua Wine



Section Eleven. Miscellaneous.

(a) **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of ~~New York~~ ^{MAINTAIN} applicable to contracts made and to be performed in that state, without giving effect to the principles of conflict of laws. Distributor specifically consents to personal jurisdiction in the federal and state courts located in the State of ~~New York~~ ^{MAINTAIN} and to service of process consistent with the laws of ~~New York~~ ^{MAINTAIN}. The parties hereby designate the Counties of ~~Monroe or Ontario~~ ^{LEWIS, SCHUYLER OR FLATHEAD} in the State of ~~New York~~ ^{MAINTAIN} as the place of trial for any action or proceeding arising out of or in connection with this Agreement.

(b) **Severability.** This Agreement is intended for general use in the United States. Pursuant to the right of the parties to freedom of contract, this Agreement shall govern the rights and obligations of the parties now and in the future. Such rights and obligations of the parties are fair and reasonable and are substantive rights which the parties have bargained for. If and to the extent that there is a final determination by any court of competent jurisdiction that any provision (or any part thereof) of this Agreement is invalid or unenforceable by reason of being in conflict with any applicable law, regulation or administrative order and if such law, regulation or order shall as a matter of law specifically supersede the laws of the State of New York otherwise governing the construction of this Agreement, such provision shall be deemed to be amended or deleted to conform to such law, regulation or order without invalidating or amending or deleting any of the other terms of this Agreement. Supplier, however, reserves the right to legally challenge any such law, regulation or order. If any such law, regulation or order is subsequently repealed or amended or judicially determined to be invalid or inapplicable, such provision shall be reincorporated into this Agreement.

(c) **Independent Contractor.** This Agreement does not constitute Distributor the agent or legal representative of Supplier. Distributor is not granted any right or authority to incur any obligation or responsibility, express or implied, on behalf of or in the name of or to bind Supplier in any manner. With respect to Supplier, Distributor is, and at all times shall act as, an independent contractor.

(d) **Legal Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or arises out of an alleged dispute, breach, default or misrepresentation relating to any of the terms of this Agreement, the prevailing party in whose favor a final judgment is rendered following the expiration of all appeals or the time to file an appeal, shall be entitled to recover reasonable attorneys fees and other costs in that action or proceeding or in a separate action brought for that purpose, in addition to any other relief to which it may be entitled.

(e) **Not Assignable.** This Agreement constitutes a personal contract of Distributor and Distributor may not delegate any of its duties under this Agreement to a third party nor may it assign this Agreement or any part thereof without Supplier's written consent. Any purported assignment of this Agreement without such consent shall be deemed void and shall give rise to an immediate right of termination in favor of Supplier. Subject to the foregoing, this Agreement shall inure to the benefit of and shall be binding upon the parties and their successors or assigns.

12. **Indemnification.** Each of the parties hereto hereby agrees to indemnify and hold the other harmless from and against any and all liabilities, losses, damages, costs or expenses which the other may hereafter incur, suffer, or be required to pay by reason of the breach by the other of any of the terms and conditions set forth within this Agreement, and further, specifically, but without limitation, by reason of any false or misleading advertising, or the failure to possess or maintain any of the Federal, state or local licenses or permits required under applicable laws. Further, in the event that any action, suit or proceeding is threatened or brought against either party, upon any liability or other form or claim of any nature whatsoever, such party shall, within five (5) days of receipt by it of notice of such actual or threatened action, suit or proceeding or other form of claim, give written notice thereof to the other party.

13. **Trademarks, Copyrights.** The Distributor recognizes, acknowledges and agrees that, by its execution or performance of the terms of this Agreement, it obtains no interest, legal, equitable or whatsoever, in any of the trademarks, trade names, copyrights, brand names, labels and the like of BridgePort, its suppliers or any of their affiliated companies; and

a. That they are owned exclusively by BridgePort, its suppliers or any of their affiliated companies.

b. Any good will or benefit derived from the use of such by the Distributor shall inure solely to the benefit of BridgePort or its affiliated companies.

c. Distributor agrees to immediately cease all use of the same upon the earlier of:

- i. the expiration or termination of this Agreement; or
- ii. written request to do so by BridgePort.

14. **Severability.** The provisions of this Agreement are hereby declared to be severable and if any provisions of this Agreement or the application of such provision to any person or circumstance is declared invalid by a court of law for any reason, such declaration shall not affect the validity of the remaining portions of this Agreement.

15. **Governing Law.** This Agreement is to be governed by and construed according to the laws of the State of Texas and is to be considered a Texas contract. In the event there is a dispute between the parties which is the subject of a demand, claim, damages or litigation, sole and exclusive jurisdiction and venue shall be in the competent State and Federal courts sitting in Bexar County, Texas.

16. **Notices.** Any notice required to be given by either party to the other in connection with this Agreement shall be in writing and shall be delivered to the

Boston Beer Company shall submit any proposed amendments to Wholesaler in writing. Wholesaler shall indicate its acceptance of all of the terms and conditions of any proposed amendment by either (i) returning two (2) executed copies to Boston Beer Company or (ii) continuing to order Product from Boston Beer Company at any time within fifty (50) days after the mailing date of the proposed amendment. If the two executed copies are returned, Boston Beer Company shall execute both copies and shall retain one executed copy of the amendment and shall return one executed copy to Wholesaler for its records. If an executed amendment shall not have been received by Boston Beer Company from Wholesaler within forty (40) days after the amendment was received by Wholesaler or Wholesaler has ordered no Product for fifty (50) days, this Agreement shall automatically terminate and both parties shall be relieved of any further liability or obligation under this Agreement, except as otherwise provided in paragraph 6. Upon such termination of this Agreement, the relationship between Wholesaler and Boston Beer Company shall thereafter be that of purchaser and seller, on an individual purchase order basis, terminable at will by either party.

15. WHOLESALER'S RIGHT TO TERMINATE

Wholesaler shall have the right to terminate this Agreement and its relationship with Boston Beer Company at any time upon giving Boston Beer Company thirty (30) days' prior written notice. If Wholesaler permanently ceases business operations, Wholesaler shall be considered to have terminated this Agreement, which termination shall be effective as of the date operations cease. In any such event, Wholesaler shall be entitled to no termination payment from Boston Beer Company, and Boston Beer Company's only obligation hereunder shall be to purchase Wholesaler's inventory of Boston Beer Company Products pursuant to the provisions of paragraph 6. Boston Beer Company shall not be obligated to purchase any other tangible assets.

16. COMPLIANCE WITH LAW

To the extent that the laws governing rights of distributors of alcoholic beverages adopted by the state in which Wholesaler primarily conducts its operations would restrict Boston Beer Company's ability to exercise any of its rights hereunder, including without limitation its rights to terminate this Agreement, such laws shall govern the exercise of such rights, superseding the applicable provisions of this Agreement. In all respects other than the exercise of rights under such laws, this Agreement is to be governed and construed according to the laws of the Commonwealth of Massachusetts and is to be considered a Massachusetts contract. The illegality or unenforceability of any provision of this Agreement, in whole or to any extent shall not operate to impair the legality or enforceability of any other provision of this Agreement or said provision except to such extent. The laws, rules and regulations of the Commonwealth of Massachusetts are hereby incorporated in this Agreement and made a party hereof to the extent that said laws, rules and regulations are required to be so incorporated and shall supersede any conflicting provision of this Agreement. If required by the laws of a state, Boston Beer Company and all Boston Beer Company Wholesalers in such state may enter into an amendment of this Agreement for the sole purpose of complying with such laws.

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 2/16/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

DATE 2-16-99

BILL NO. HB 615

SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

☒ POI	Robert Zuccomi	HELENA	Zek's Dist.
☒ POI	Ed BRANDT	BOZEMAN	Carpenter Dist.
☒ POI	Chad Godbout	Butte	Mile High Beverages
☒ POI	John Decker	Billings	Briggs Dist. Co., Inc
☒ POI	Kristi Roca	Helena	Mont Bee Wine Whiskey
☒ POI	Mona Jamison	Helena	Wine Dist. Co.
☐ POI			
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☐ POI			
☐ POI			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on February 17, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: Rep. Rod Bitney (R)

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 639 and 640 additional
testimony heard (2/15/99)
Executive Action: HB 526, HB 639, HB 640, HB
506, HB 547, HB 546, HB 572,
HB 592, HB 615, HB 618, HB
624, HB 603, HB 604, HB 611,
HB 181, HB 521, HB 395, HB
521, HB 515, HB 516, HB 518,
HB 519, HB 529

HEARING ON HB 639 AND 640

Testimony: Montana Higher Education and University System
testified.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 21}

EXECUTIVE ACTION ON HB 526

Motion: REP. PAVLOVICH moved that HB 526 DO PASS.

{Tape : 1; Side : A; Approx. Time Counter : 21 - 31}

Motion/Vote: REP. PAVLOVICH moved that HB 526 BE AMENDED. Motion
carried unanimously.

{Tape : 1; Side : A; Approx. Time Counter : 31 - 41}

Motion/Vote: REP. PAVLOVICH moved that HB 526 DO PASS AS
AMENDED. Motion carried 14-4 with Masolo, McKenney, Sliter, and
Trexler voting no.

{Tape : 1; Side : A; Approx. Time Counter : 41 - 51}

EXECUTIVE ACTION ON HB 639 AND 640

Motion/Vote: REP. PAVLOVICH moved that HB 639 AND 640 DO PASS.
Motion carried 14-4 with Masolo, McKenney, Sliter, and Trexler
voting no.

{Tape : 1; Side : A; Approx. Time Counter : 51 - 114}

EXECUTIVE ACTION ON HB 506

Motion: REP. SLITER moved that HB 506 DO PASS.

{Tape : 1; Side : A; Approx. Time Counter : 114 - 124}

Motion/Vote: REP. SQUIRES moved that HB 572 DO PASS AS AMENDED.
Motion carried 10-8 with Barnett, Bitney, Brown, Lawson, Masolo,
McKenney, Simon, and Trexler voting no.
{Tape : 1; Side : A; Approx. Time Counter : 483 - 500}

EXECUTIVE ACTION ON HB 592

Motion: REP. PAVLOVICH moved that HB 592 DO PASS.
{Tape : 1; Side : B; Approx. Time Counter : 0 - 25}

Motion/Vote: REP. PAVLOVICH moved that HB 592 BE AMENDED.
Motion carried unanimously.
{Tape : 1; Side : B; Approx. Time Counter : 25 - 49}

Motion/Vote: REP. EWER moved that HB 592 BE AMENDED. Motion
carried 17-1 with Sliter voting no.
{Tape : 1; Side : B; Approx. Time Counter : 49 - 107}

Motion: REP. PAVLOVICH moved that HB 592 BE AMENDED. Motion
failed on a voice vote.
{Tape : 1; Side : B; Approx. Time Counter : 107 - 152}

Motion/Vote: REP. TUSS moved that HB 506 DO PASS AS AMENDED.
Motion carried unanimously.
{Tape : 1; Side : B; Approx. Time Counter : 152 - 155}

EXECUTIVE ACTION ON HB 615

Motion/Vote: REP. PAVLOVICH moved that HB 615 DO PASS. Motion
carried unanimously.
{Tape : 1; Side : B; Approx. Time Counter : 155 - 170}

EXECUTIVE ACTION ON HB 618

Motion/Vote: REP. PAVLOVICH moved that HB 618 BE TABLED. Motion
carried 14-4 with Krenzler, Simon, Squires, and Tuss voting no.
{Tape : 1; Side : B; Approx. Time Counter : 170 - 233}

EXECUTIVE ACTION ON HB 624

Motion: REP. SLITER moved that HB 624 DO PASS.
{Tape : 1; Side : B; Approx. Time Counter : 233 - 265}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE

2/17/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney		X	
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		



HOUSE STANDING COMMITTEE REPORT

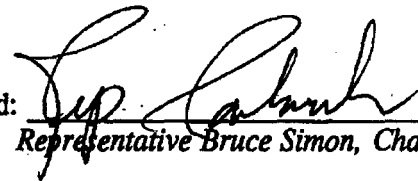
February 17, 1999

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** report that **House Bill 615** (first reading copy -- white) do pass.

Signed:


Representative Bruce Simon, Chair

- END -

Committee Vote:
Yes 18, No 0.

391336SC.ham

2.
3:20
2-17

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 10, 1999 at
9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 442, 3/4/1999
HB 522, 3/4/1999
HB 615, 3/4/1999
Executive Action: HB 442; HB 522

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON HB 442

Sponsor: REP. JAY STOVALL, HD 16, BILLINGS

HEARING ON HB 615

Sponsor: REP. DAN W. HARRINGTON, HD 38, BUTTE

Proponents: Pete Decker, Billings
Chad Godbout, Mile High Beverages, Inc.
Ralph Nellis, Intermountain Distributing Co.,
Billings
Robert Zucconi, Zeke's Distributing Co., Helena
Kristi Blazer, MT Beer & Wine Wholesalers Assoc.

Opponents: Mona Jamison, Wine Institute

Opening Statement by Sponsor:

REP. DAN W. HARRINGTON, HD 38, BUTTE. He presented his opening and handed in the written copy EXHIBIT(bus54a03).

Proponents' Testimony:

Pete Decker, Billings. I am a retired owner of Briggs Distributing Company. We have been a Millers distributor since 1967. I am here in place of my son because he is in bed for a degenerative disc in his back. I have not been active in the business and I would like to read a letter that he wrote to Karen Ripley, Senior Assistant General Counsel for Miller Brewing Co. and I would also like to read a FAX from Kelly Grebe from Miller Brewing EXHIBIT(bus54a04). Several distributors have traveled back and forth from Chicago to Billings and have spent approximately \$15,000 in those two months arguing their position. This issue is not confined only to breweries. The wineries have the same situation. Thank you.

Chad Godbout, Mile High Beverages, Inc., Butte. He explained the chronology of his problem with Miller and handed in this chronology EXHIBIT(bus54a05).

{Tape : 1; Side : B; Approx. Time Counter : 0; Comments : For unknown reasons there is no recorded material on Side B. The following is a reconstruction of the hearing on HB 615.}

Ralph Nellis, Billings. He was an older gentleman from Billings who gave a short testimony in favor of the bill.

{Tape : 1; Side : B; Approx. Time Counter : 3.1}

Robert Zuconni, Zeke's Distributing Co., Helena. He gave his testimony in favor of the bill and introduced an exhibit **EXHIBIT(bus54a06)** that showed a contract with a wine manufacturer and the limitations of their contract that would hold a distributor to litigation in the State of Washington and other rules and guidelines.

{Tape : 1; Side : B; Approx. Time Counter : 4.1}

Kristi Blazer, MT Beer & Wine Wholesalers Assoc. She gave her testimony and handed in the written copy **EXHIBIT(bus54a07)**. She also handed in a Bill Drafting Request **EXHIBIT(bus54a08)** that shows what the sponsor requested in this particular bill: (1) interpretation: the agreements are to be interpreted according to Montana law; (2) forum: disputes are to be litigated in Montana; (3) right to jury trial: wholesalers or distributors cannot be forced to waive their right to a jury trial.

{Tape : 1; Side : B; Approx. Time Counter : 6.6}

Opponents' Testimony:

Mona Jamison, Wine Institute. She said that a contract is a contract and if a person enters into one willingly the state should not revise their laws to nullify the contract. She also felt that the problems that were presented in testimony were against the beer manufacturers rather than the wineries and didn't feel that wineries should be included in the bill.

{Tape : 1; Side : B; Approx. Time Counter : 16.6}

Questions from Committee Members and Responses:

There were questions from **SEN. COCCHIARELLA** for **Steve Browning**.

{Tape : 1; Side : B; Approx. Time Counter : 20.1}

There were questions from **SEN. SPRAGUE** for **Ms. Jamison** and **Ms. Blazer**.

{Tape : 1; Side : B; Approx. Time Counter : 24.2}

There were questions from **SEN. MCCARTHY** for **Mr. Godbout** and **Ms. Blazer**.

{Tape : 1; Side : B; Approx. Time Counter : 31}

There was a question from SEN. HERTEL fro Ms. Blazer. There was a question from SEN. MCCARTHY for REP. HARRINGTON.

{Tape : 1; Side : B; Approx. Time Counter : 34.5}

There were questions from SEN. SPRAGUE for Ms. Jamison.

{Tape : 1; Side : B; Approx. Time Counter : 39.3}

Closing by Sponsor:

REP. HARRINGTON closed. SEN. BOB KEENAN will carry the bill on the Senate Floor.

{Tape : 2; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB 522

Motion/Vote: SEN. MCCARTHY moved that HB 522 BE CONCURRED IN.
Motion carried unanimously. 6-0

SEN. MCCARTHY will carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 442

Motion/Vote: SEN. SPRAGUE moved that HB 442 BE CONCURRED IN.
Motion carried unanimously. 6-0

SEN. SPRAGUE will carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 153

Motion: SEN. COCCHIARELLA moved that HB 153 BE removed from the
TABLE. Motion carried unanimously. 6-0

**HOUSE FLOOR
TALKING POINTS
HOUSE BILL 615**

This bill could be renamed the "Attorney Fee Reduction Act."

The new provisions will apply should disputes arise between one of our 37 Montana wholesalers and any of their out-of-state suppliers of beer or wine.

The first step to any such lawsuit is procedural: Where is the lawsuit to be conducted, which state's law applies, and is there a right to a jury trial. House Bill 615 provides a "Montana" answer to those three questions, without the need for expensive litigation to arrive at those answers.

In other words, both parties can save their money for litigation of the merits.

- WHAT is the bill about?

Making Perfectly Evident that disputes between Montana wholesalers are to be litigated where the contract is to be performed: in Montana, unless an unreasonable burden is placed on either party.

Making Perfectly Evident that the law of the place where the contract is to be performed applies — that is, Montana law.

And Making Perfectly Evident that either side has the constitutional right to a jury trial.

- WHY is the bill necessary?

It is unfortunate that this bill is necessary. The three rights currently exist in Montana law, though perhaps not with the Clarity needed for these out-of-state suppliers.

In addition, in contract litigation, the general rule is that disputes are to be litigated in the place where the contract is to be performed, and that the law to be applied is also the place of performance, including constitutional rights. The beer and wine to be distributed under these contracts is to be distributed in Montana

This bill is necessary because the contracts with suppliers are not the product of negotiation. They are handed out, by the out-of-state supplier, on a take-it-or-leave-it basis.

The Business and Labor committee heard testimony from Montana wholesalers who recently faced the loss of their businesses if they refused to sign a brewer's contract without any opportunity to negotiate. That contract would have required litigation in Wisconsin, and would have required the wholesalers to give up their right to a jury trial. Ultimately, after 2 trips to Chicago by the wholesalers, \$15,000 in attorney fees, and sleepless nights, Miller conceded at the 11th Hour in order to obtain signatures of the Montana wholesalers on the contract, that it would recognize Montana law.

The Committee also saw examples of winery contracts to the same effect — go to California for disputes, go to Washington for disputes, do not attempt to change anything in our contract or it will be invalid.

- WHO will be affected by the bill?

NOTABLY, THE WORLD'S BIGGEST BREWER — ANHEUSER-BUSCH WORKED WITH THE WHOLESALERS ON THE LANGUAGE OF THE BILL AND HAS AGREED NOT TO OPPOSE.

Other large out-of state breweries like Miller and Coors and Pabst will be affected. The small in-state brewers will not be affected because Montana would be the only forum any way, Montana law would apply and thus there would be a right to a jury trial.

In addition, out-of-state wineries would be affected. The first and second largest wine conglomerates in the world, Gallo and Canandaigua, would no longer be able to put in their contracts that the Montana wholesalers would have to go to New York or California to litigate.

- HOW is the purpose of the bill accomplished?

By placing these three basic protections in the beer and wine franchise law. This is not breaking new ground. About 40 states have franchise protection, similar to Montana's, for their in-state wholesalers, a significant number of those states already provide that litigation is to be in-state, and that their state law applies. The jury trial right became an issue in the last and most expensive argument over a new so-called contract handed down by a brewer. Montana is just catching up with our franchise law

The out-of-state brewers and wineries have been thumbing their noses at Montana law. As I stated when I began my remarks, this is an

Attorney Fee Reduction bill, and eliminates all question about the first issues in litigation: where will be trial be held, which states' law applies, and does the right to a jury trial apply.

If a Montana wholesaler has a dispute with a supplier, both parties can get right to the merits. So I urge your support of House Bill 615.

December 16, 1998

Karen Ripley
Senior Assistant General Counsel
Miller Brewing Company
FAX #414-931-3177

Dear Ms. Ripley:

Before I begin, I want to say that Briggs is a proud distributor of Miller products and has been for more than thirty five years, and it is with a great deal of regret that I am writing you this letter today. In the days since our November 4th meeting in Milwaukee, I have been reviewing the proposed new Miller Brewing Company Distributor Agreement. The contents of this letter are not to be construed as anything other than very legitimate concerns that I would have before entering into any business agreement.

I am quite concerned about the negative effects that the Miller Agreement will have on the value of my business and my ability to control my business. Because I feel that there is no room for negotiation, I am going to address the presentation of the agreement more than the contents. I honestly feel that it would be a waste of my time to express my feelings about the fairness of the agreement, and even whether or not the agreement is legal and binding in the state of Montana. I am convinced without a doubt that this agreement is very one sided in Miller's favor.

Having said that, these are my thoughts and concerns as I ponder signing the contract:

First of all, a termination letter was sent on October 1, 1998 by Jack MacDonough stating that our old agreement "will expire and become null and void at midnight on December 31, 1998." In the letter it was stated that "... joint task teams of distributors and Miller people have been working to develop an improved distributor agreement. I am pleased to inform you that thanks to their efforts, a new, superior agreement has been completed." More on this later. A meeting was called in Milwaukee on November 4, 1998, which I attended.

Second, at the Milwaukee meeting Chris Moore made a comment on stage that the contract was non-negotiable, and if you did not sign it by the deadline you would no longer have an agreement and would no longer be a distributor of Miller products as of midnight, December 31, 1998.

Domestic, Craft, and Imported Beers. Fine Wines. Non-alcoholic Beverages.

3915 1st Avenue South P.O. Box 1515 Billings, Montana 59103 406 252-2878 FAX 406 252-2301



Third, in several newspaper articles that I have read, primarily the *Milwaukee Sentinel*, Chris Moore is quoted saying once again that the agreement is non-negotiable.

Fourth, after a meeting in Chicago of concerned Miller distributors and a subsequent discussion with Bill Schmus, the time-line was altered to give us some more time to digest the agreement. That was very short lived, and that offer was subsequently withdrawn with a firm statement saying that it was non-negotiable.

Fifth, in two telephone conversations with Gary McGrath, my Miller regional manager in Seattle, in a very cordial manner he stated that if I had not signed the contract by the deadline of December 31, termination proceedings would begin against my distributorship.

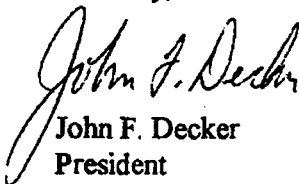
To sum up my comments and concerns above, I am not feeling a party to this document, rather, I am feeling that if I do not sign it I will simply be put out of business on December 31, 1998 by the Miller Brewing Company. Not a very comforting thought to be put out of business by someone who I have always represented to the best of my ability, and considered a partner. Furthermore, as far as a joint task force working on this document, I have to question that based on the comments made by several of those distributors that were on the task force. They seem confused by the document and the lack of similarity to what they actually discussed with Miller, and consequently feel used and abused by the Brewery. Please note, that this is only my read on their feelings, one which I believe to be accurate.

Ms. Ripley, I am feeling intimidated, threatened, and if I sign this agreement it will only be out of severe duress placed on me by the Miller Brewing Company and not due to any reasonable business sense that I possess. Is the document non-negotiable, and will I be out of the Miller business on December 31st if I do not have it signed and back to you by that time?

Time is of the essence, so I would appreciate hearing from you as soon as possible. Because of the seriousness nature of the subject at hand, I would like to request that your response be done in writing. We do not have the luxury of time, and missed phone calls will not suffice.

Thank you in advance for your time in this matter.

Sincerely,



John F. Decker
President



Kelly H. Grebe
Senior Counsel

VIA FACSIMILE

December 18, 1998

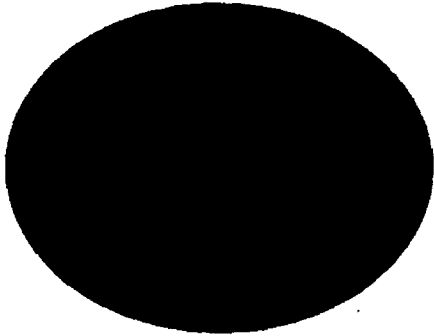
Mr. John F. Decker
President
Briggs Distributing Company
3915 1st Avenue South
P. O. Box 1515
Billings, MT 59103

Dear Mr. Decker:

As a follow-up to our conversation this morning, please note that the Miller Brewing Company Distribution Agreement with Briggs Distributing Company, Inc. Please review the electronic communication sent to all distributors today clarifying a number of issues. We ask that you promptly return a signed Agreement. If you do not receive a signed Agreement by December 31, 1998, your agency will no longer be authorized to sell Miller products at the current Agency. Expires December 31, 1998.

Very truly yours,

KHG/sal



December 18, 1998

Kevin Sweeney
FAX #652-8102

Dear Kevin:

Attached please find some correspondence between MBCo and myself in regard to the new MBCo Distributor Agreement. I went to Chicago once again this past week, and the biggest fear was that by some miracle MBCo would negotiate the contract. That may sound strange, but the thought behind it was that if they did not, it would be a contract of adhesion, and would not be a valid contract in any of the 50 states. That sounds too simple, but it's about all we have at this point. It was recommended that we memorialize what MBCo was doing, so I did that with my letter, and got back the response I was looking for. I also spoke to a MBCo attorney on the phone for about an hour.

We aren't getting anywhere with Joe Mazurek - so we won't be supporting him for governor!

Just wanted to let you know what was up - please give me a call with your spin on this latest move. It seems to be all we have short of litigation. I am not crazy about that.

Sincerely,



John Decker

Domestic, Craft, and Imported Beers. Fine Wines. Non-alcoholic Beverages.

3915 1st Avenue South P.O. Box 1515 Billings, Montana 59103 406 252-2878 FAX 406 252-2301



CHRONOLOGY OF MILLER DISPUTE

November 4, 1998	Meeting for all Wholesalers and Letter from Miller stating that new contract must be signed by December 1, 1998, and that all non-signing wholesalers would be terminated as of December 31, 1998
November 23, 1998	Meeting in Chicago of numerous Miller wholesalers, Miller first agrees then refuses to extend deadline for signing
December 15, 1998	Second meeting in Chicago for numerous wholesalers
December 16, 1998	Miller meets with representatives from wholesaler group, refuses to change any aspect of agreement
December 22, 1998	Miller finally sends, by facsimile, letter to Montana wholesalers agreeing: 1) Montana would exist as a potential forum for disputes; 2) where a conflict exists between Montana law and contract, Montana law would control



MAJESTIC MARKETING GROUP LTD

AKA *Kendall Jackson*

January 4, 1994

Mr. Brian Smith
FUN BEVERAGE
4541 Highway 93 South
Kalispell, MT 59901

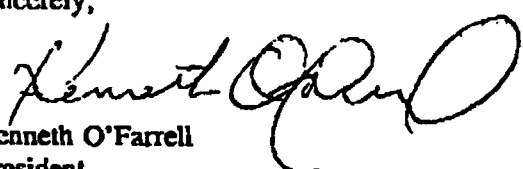
Dear Brian:

Enclosed is a contract offering to appoint your company as a La Crema Distributor. Please fill in Exhibit A with the name of the brand manager who will be handling La Crema. Please review this contract, sign it and return it to our office. The agreement shall be effective only after La Crema has approved and executed the document on its return by you to our Santa Rosa office. Please note that the contract will not be approved if altered in any way.

We will be able to ship you product immediately after receipt and approval of the signed contract in our office. Our local Majestic Marketing Sales Representative will be contacting you to handle any needs that you have or answer any questions.

Thank you, and we look forward to a long, profitable relationship with you.

Sincerely,



Kenneth O'Farrell
President

cc: Michael Haarstad
Sol Varon

KOF/agr

STIMSON LAKE

- (i) All outstanding invoices due and owing to Company have been paid in full;
 - (ii) Such orders are in accord with past purchasing practices;
 - (iii) Such orders are scheduled for delivery prior to the effective date of termination; and
 - (iv) Such orders shall be sufficient to satisfy only Distributor's immediate needs consistent with past performance, for the Products in the Area for sales and delivery prior to the date of termination and not thereafter.
- c. The Company may, at its option and in its sole discretion, within thirty (30) days of the effective date of expiration or termination, repurchase at Distributor's laid-in cost its inventory of the Products and/or point-of-sale material for the Product purchased by Distributor, less any sums for payments Distributor owes to Company.
- d. Distributor shall promptly release and deliver to the Company all point-of-sale material for the Product in its possession that the Company furnished without charge.
- e. Both parties warrant and covenant that, upon expiration or termination, neither party will make any statements or take any action to impair or diminish the reputation, goodwill or business of the other party.
9. **Trademarks.** Company grants to Distributor the non-exclusive right to sell and distribute the Products bearing the trademarks (the "Trademarks") in the Area, and to otherwise use the Trademarks solely in connection with Distributor's sale and distribution of the Products. Distributor expressly acknowledges that such trademarks are the exclusive property of the Company. Distributor's use of the Trademarks shall be in good taste and not be denigrating in any way to the Company or the Trademarks. Distributor may not use any of the Trademarks in any form of advertising without the Company's prior consent except for bottle mats and cuts of Products provided by the Company. Upon termination of this agreement, Distributor shall immediately cease all use of such Trademarks.
10. **Distributor's Prices.** Prices charged by Distributor and credit terms, if any, offered by Distributor are within Distributor's sole discretion. The Company may from time to time make recommendations on any phase of Distributor's business of selling the Products, including pricing.
11. **Choice of Law; Arbitration.**
- a. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington applicable to contracts made and to be performed in that State, without giving effect to the principles of conflicts of laws and without giving effect to the provisions of Washington "Wholesale Distributor/Supplier Equity Agreement Act" or any other similar provisions presently in effect or subsequently enacted in the State of Washington.
 - b. In the event any disagreement or dispute between the parties arises out of this Agreement, such disagreement or dispute shall be submitted to binding arbitration before the Seattle, Washington Office of Judicial Arbitration and Mediation Services, Inc. ("JAMS") unless the parties mutually agree upon an alternative dispute resolution service. The arbitration shall be conducted in accordance with the rules of JAMS or such other dispute resolution service as might be agreed upon and shall be held in Seattle, Washington. Any award made by JAMS or such other dispute resolution service as might be agreed upon shall be binding upon the parties. Arbitration shall be the exclusive remedy for breach or termination or expiration disputes arising out of this Agreement by either party. The parties shall share equally all costs of arbitration other than representation by counsel which shall be at each party's own expense.

Kendall Jackson Wine

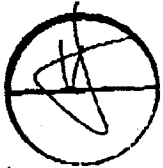
parties' choice of California law to govern, construe and resolve disputes by arbitration under this Agreement.

24. Governing Law.

This Agreement is to be governed and construed in accordance with the laws of the State of California and any disputes or controversies arising in connection herewith, shall be resolved under California law. Any controversy, dispute or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in San Francisco, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association and in accordance with the substantive rules of California law. Further, the rights of the parties hereto and the powers and duties and jurisdiction of the Arbitrator(s) hereunder shall be subject to, and coextensive with the rights, powers and duties and jurisdiction provided under California law. The award rendered by the Arbitrator(s) shall be final and binding, and judgment on said award may be entered in any court having jurisdiction thereof. Each party shall bear its own costs and fees of arbitration. All such disputes or controversies shall be arbitrated under the rules of the American Arbitration Association.

25. Waiver.

The failure or omission by either party to insist upon or enforce any of the terms of this Agreement shall not be deemed a waiver of such term unless the waiver is in writing and signed by the party against whom such waiver is sought to be enforced. Waiver of any one term shall not be deemed a waiver of any other.

Canandaigua Wine**Section Eleven. Miscellaneous.**

(a) **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of ~~New York~~ ^{MAINTAIN} applicable to contracts made and to be performed in that state, without giving effect to the principles of conflict of laws. Distributor specifically consents to personal jurisdiction in the federal and state courts located in the State of New York and to service of process consistent with the laws of ~~New York~~ ^{MAINTAIN}. The parties hereby designate the Counties of ~~Montgomery and Ontario~~ ^{LEWIS, SCHUYLER OR FULTON} in the State of ~~New York~~ ^{MAINTAIN} as the place of trial for any action or proceeding arising out of or in connection with this Agreement.

(b) **Severability.** This Agreement is intended for general use in the United States. Pursuant to the right of the parties to freedom of contract, this Agreement shall govern the rights and obligations of the parties now and in the future. Such rights and obligations of the parties are fair and reasonable and are substantive rights which the parties have bargained for. If and to the extent that there is a final determination by any court of competent jurisdiction that any provision (or any part thereof) of this Agreement is invalid or unenforceable by reason of being in conflict with any applicable law, regulation or administrative order and if such law, regulation or order shall as a matter of law specifically supersede the laws of the State of New York otherwise governing the construction of this Agreement, such provision shall be deemed to be amended or deleted to conform to such law, regulation or order without invalidating or amending or deleting any of the other terms of this Agreement. Supplier, however, reserves the right to legally challenge any such law, regulation or order. If any such law, regulation or order is subsequently repealed or amended or judicially determined to be invalid or inapplicable, such provision shall be reincorporated into this Agreement.

(c) **Independent Contractor.** This Agreement does not constitute Distributor the agent or legal representative of Supplier. Distributor is not granted any right or authority to incur any obligation or responsibility, express or implied, on behalf of or in the name of or to bind Supplier in any manner. With respect to Supplier, Distributor is, and at all times shall act as, an independent contractor.

(d) **Legal Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or arises out of an alleged dispute, breach, default or misrepresentation relating to any of the terms of this Agreement, the prevailing party in whose favor a final judgment is rendered following the expiration of all appeals or the time to file an appeal, shall be entitled to recover reasonable attorneys fees and other costs in that action or proceeding or in a separate action brought for that purpose, in addition to any other relief to which it may be entitled.

(e) **Not Assignable.** This Agreement constitutes a personal contract of Distributor and Distributor may not delegate any of its duties under this Agreement to a third party nor may it assign this Agreement or any part thereof without Supplier's written consent. Any purported assignment of this Agreement without such consent shall be deemed void and shall give rise to an immediate right of termination in favor of Supplier. Subject to the foregoing, this Agreement shall inure to the benefit of and shall be binding upon the parties and their successors or assigns.

**TESTIMONY OF KRISTI BLAZER
RE HOUSE BILL 615**

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7
DATE 3-10-99
BILL NO. HB 615

**HOUSE BILL 615 MOVES ADDITIONAL PROTECTIONS
FROM OTHER AREAS OF MONTANA LAW INTO THE BEER AND
WINE CODE.**

The world's largest brewer, Anheuser-Busch, worked with me on this language, and has agreed to the language. I attempted to work with The Wine Institute, which includes Gallo Winery and Canandagua Winery, two of the largest wine conglomerates, but to no avail. The Wine Institute's position at the House Business and Industry was that the wineries were not the problem. The testimony and wine contract exhibits produced today — dispel that position.

1) The Protections Added.

House Bill 615 is designed to add three protections into one of the beer franchise statutes and two protections into one of the wine franchise statutes.

2) The Purpose of Franchise Laws.

As background, various protections are already found in both the beer and wine franchise statutes. Franchise statutes are designed to protect in-state wholesalers from unfair conduct by out-of-state suppliers. Suppliers typically have more power than the wholesalers so the franchise laws equalize that power by requiring fair treatment. The fair treatment must be provided in contracts between supplier and wholesaler, and in relationships existing in the absence of a written contract. When a supplier acts as though a wholesaler is working under a contract, a contract is *implied* by law to protect the wholesaler. E.g., Mont. Code Ann. § 16-3-224 entitled "Contractual or franchise relationship — existence by actions."

3) What is a Contract? What is an Adhesion Contract?

Contracts, by their nature, are intended to be the result of negotiation. However, many out-of-state suppliers utilize "adhesion" contracts. An adhesion contract is offered on a take-it-or-leave-it basis, with no ability of the wholesaler to negotiate terms. Other examples of adhesion contracts are insurance policies, over which the policy holder might only have a limited choice as to deductible, coverage limits, but the terms are non-negotiable. To prevent supplier contracts from being unfair, about 38 states have enacted franchise laws of some sort to protect their in-state wholesalers.

4) See Attached Graph.

The attached graph shows the *current* franchise protections against beer suppliers as well as the three *additions*: (1) contracts are to be interpreted according to Montana law; (2) litigation is to occur in Montana unless that would create an unreasonable burden; and (3) the contract is to recognize the constitutional right to a jury trial.

The attached graph also shows the *existing* franchise protections against wine suppliers as well as the two *additions*: number (2) and (3) from the above paragraph. Number one — governing law — already exists in the wine franchise law.

5) No Change in Existing Law — Clarification.

House Bill 615 does not really change Montana law, but merely places the protections in an area of the Montana Code where suppliers cannot ignore them. This bill is a minor adjustments because the law is not crystal clear. And, whenever that happens, parties litigate over preliminary matters, and spend far too much in attorney fees. Let me discuss the "Montana as the forum" protection as an example.

"Montana as the forum" is a primary concern. The reason: Miller's contract attempted to place the forum for disputes in a

Wisconsin federal court, and the typical winery contract places the forum in the state where the winery is located — with no room for negotiation.

6) Prevention of Litigation over Preliminary Matters.

Contracts are intended to foresee and resolve problems before they occur. An analogy is an airplane with emergency doors. We all hope we never have to use them, but we sure want the ability to exit if the need arises. When a contract contains a forum provision, the first battle to litigate is where to litigate. That should not be necessary.

The statute which we rely on to say that forum protection already exists is found in the general provisions on contracts, any type of contract. Mont. Code Ann. § 28-2-708 is entitled "Restraints upon legal proceedings void" and states:

Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. . . .

The question, of course, is: are Montana courts the *only* "ordinary tribunals"? The answer to that question is not clear. One Montana case has held that the term "ordinary tribunals" does mean a Montana court. However, case law is not the end to any question. All cases are fact-specific, and a supplier would be able to challenge the holding of that case by distinguishing it on its facts.

Due to the desire to avoid litigation over preliminary questions such as — which court, what law, and whether parties are entitled to constitutional rights under the contract — is the reason for House Bill 615.

7) Wine Franchise — Consistent with Current Arbitration Requirement.

House Bill 615, insofar as the wine franchise law, provides for consistency with current provisions. The typical winery contract conflicts with Montana law by incorporating an arbitration requirement.

For example, the typical winery contract provides for “arbitration” under California rules of arbitration, in California, or mediation in Washington, according to Washington rules.

Under the wine franchise law, all disputes are to be litigated *except* for one: determining the “laid-in cost of inventory” when a supplier makes a good faith termination. For that issue, an arbitrator is appointed by the department of revenue. The arbitration is to be conducted under Title 27, chapter 5, of the Montana Code. There is no provision for arbitration under California or Washington law, as stated in the typical winery contract.

Additionally, Montana’s arbitration system contemplates some form of litigation (post-arbitration) in a Montana court. And that is consistent with the proposed changes made by House Bill 615.

The wine franchise law specifically refers to Title 27, chapter 5. Under those statutes, all arbitration awards must be confirmed in a Montana district court. Mont. Code Ann. § 27-5-311. In addition, there are safeguards against “bad” awards. Under Mont. Code Ann. § 27-5-312, an award can be vacated. Arbitration awards can also be modified or corrected. Mont. Code Ann. § 27-5-314. Under the winery contracts reviewed, those safeguards would not be available. The “Montana as the forum” provision proposed to be added by House Bill 615 maintains the integrity of the current franchise statute.

**BEER FRANCHISE
CURRENTLY HAS**

Assigned territory 16-3-222

Agreed Brands 16-3-222

Territory protection 16-3-222

**WINE FRANCHISE
CURRENTLY HAS**

60 day notice of
termination 16-3-416

No unreasonable withholding by
Supplier of consent to transfer of
ownership 16-3-416

Defined territory 16-3-416

Method for determining
compensation for laid-in inventory
upon good faith termination by the
supplier, etc. 16-3-416

Contract interpreted according to
Montana law

**BEER
615 WILL ADD**

1). Contracts to be interpreted by
Montana law.

2). Litigation to occur in Montana.

3). Contract to recognized the
constitutional right to a jury
trial.

**WINE
615 WILL ADD**

1). Litigation to occur in Montana

2). Contract to recognize the
constitutional right to a jury
trial.

Bill Drafting RequestEXHIBIT NO. 8DATE 3-10-99BILL NO. H B 615

Montana Legislative Services Division
 Room 138 — State Capitol
 Helena MT 59620-1706
 (406) 444-3064
 FAX: (406) 444-3036
 e-mail: gpetsach@mt.gov

For Legislative Services Division Use Only:

Date of Request 1Requestor _____
(Please Print)**Description of Request***(Must be specific)*

Revise the beer and wine franchise laws to re-state within those statutes certain protections found elsewhere under Montana law.

Specifically, the requested revisions affect Mont. Code Ann. § 16-3-222 which sets forth the mandatory provisions for beer wholesaler contracts, and Mont. Code Ann. § 16-3-416 which sets forth mandatory provisions for table wine distributor contracts.

The proposed revisions will add three protections found at other places in Montana law:

1) Interpretation.

The agreements are to be interpreted according to Montana law. Casarotto v. Lombardi, 886 P.2d 931 (Mont. 1994) *rev'd on other grounds* 134 L. Ed. 902 (1996).

2) Forum.

Disputes are to be litigated in Montana. Mont. Code Ann. § 28-2-708; State ex rel. Polaris Indus. v. District Court, 695 P.2d 471 (Mont. 1985); Rindal v. Seckler Co., Inc. 786 F. Supp. 890 (D. Mont. 1990).

3) Right to Jury Trial.

Wholesalers or Distributors cannot be forced to waive their right to a jury trial. Mont. Const., art. II, § 26; Moore v. Capital Gas Corp., 58 P.2d 302 (Mont. 1945).

As an added benefit, the requirements will be the same under both the beer franchise laws and the wine franchise laws.

Dan Harrington
 Requesting Legislator

 Requesting Agency

Authority to contact anyone felt necessary

YES

NO

Contact Person(s):

Name(s) _____

Phone(s) _____

DATE 3-10-99

[illegible]

DATE March 10, 1999

SENATE COMMITTEE ON Bus. & Ind.

BILLS BEING HEARD TODAY: HB 442, HB 522, HB 615

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Robert Zuccari	442-1142	ZEKE'S Dist	HB 615 HB 522 HB 442	✓	
Ralph Neller	245-7744	Dist. C.O. INTERMOUNTAIN	HB 615 HB 442 HB 522	✓	
Chad L. Godbout	723-3984	Mile High Beverages Inc	HB 615 HB 442 HB 522	✓	
Pete Decker	252-2878	Briggs Dist. Co	HB 615 HB 442 HB 522	✓	
Tommy Hummelberger	252-1200	Hummelberger Brewing Co	442	+	
Tim O'Leary	728-1660	Kettlehouse Brewing	442	✓	
Neil Peterson	444-1941	DOR	522	✓	
Todd Daniels	449-6214	KEEBLER BREWING	442 HB	✓	
Randy Johnson	761-4596	MT GRAIN GROWERS ASS	HB 442	✓	
MARK STAPLES	443-4345	MT TAVERN ASSOCIATION	HB 442	✓	
Steve Browning	443-6820	Anheuser Busch	HB 522	✓	
Mona Jamison	742-5581	Wine Dist	HB 615		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 11, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 47; HB 186, 3/4/1999
HB 526; HB 639, 3/4/1999
HB 640, 3/4/1999
Executive Action: HB 526; HB 615
HB 639; HB 640

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON HB 47

Sponsor: REP. SHIELL W. ANDERSON, HD 25, LIVINGSTON

EXECUTIVE ACTION ON HB 639

Motion/Vote: SEN. MCCARTHY moved that HB 639 BE TABLED. Motion carried unanimously. 5-0

EXECUTIVE ACTION ON HB 640

Motion/Vote: SEN. MCCARTHY moved that HB 640 BE TABLED. Motion carried unanimously. 5-0

EXECUTIVE ACTION ON HB 526

Motion: SEN. MCCARTHY moved that HB 526 BE CONCURRED IN.

Discussion: Motion/Vote: SEN. MCCARTHY moved that HB 526 BE AMENDED (Exhibit 4). Motion carried unanimously. 5-0

Motion/Vote: SEN. MCCARTHY moved that HB 526 BE CONCURRED IN AS AMENDED. Motion carried unanimously. 5-0

SEN. J.D. LYNCH will carry the bill on the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 18.5}

EXECUTIVE ACTION ON HB 615

Motion: SEN. COCCHIARELLA moved that HB 615 BE CONCURRED IN.

Discussion: Motion: SEN. BERRY moved that HB 615 BE AMENDED, HB061502.abc EXHIBIT(bus55a05).

Discussion: Mr. Campbell explained the amendments. Basically, the wine industry is taken out of the bill and leaves it directly dealing with the beer industry. SEN. SPRAGUE said that he had asked for some research to be done and he had received it back. Other states currently regulate both beer and wine together. Therefore, it does not seem unusual to have these two business addressed at the same time in this bill. If this weren't important or a problem like the wine people indicated, why are they so worried about being regulated the same as the beer industry under this bill.

SEN. COCCHIARELLA said that the law is already sort of in statute and this bill clarifies the venue for beer and wine in Montana. It makes it clear that they have to come to Montana when there is a dispute and to have a trial by jury. **Mr. Campbell** said that the bill will state statutorily that a dispute must be litigated in Montana. Right now, a contract provision will state which jurisdiction a dispute would be settled in. The question of a jury trial would then be determined by the jurisdiction venue.

SEN. COCCHIARELLA then said if this law is passed, would that prohibit contract language between two entities from having the venue someplace else unless it causes an extreme burden on the Montana business. **Mr. Campbell** said that Montana law says that with respect to these agreements, jurisdiction must be in Montana. That would control over contract provision. If another state had a similar law, then it would seem the issue of extreme burden would come into play and possibly decide the venue for the lawsuit.

{Tape : 1; Side : B; Approx. Time Counter : 26}

SEN. SPRAGUE asked if a contract were signed under duress, would this bill force a brewery or winery to come to Montana for the venue. It seems that it would. **Mr. Campbell** said that if he were the Montana distributor and there is a big thick contract with the venue in New York, but knew that in Montana law, the venue would be Montana, he would go to a Montana court and ask for a decision based upon the statute that this bill would provide. He believes that the Montana court would rule in his favor.

SEN. BERRY said that when two parties negotiate, this bill will stop negotiations. **SEN. COCCHIARELLA** said that the Canadagua Winery just walked in and took their wine away from a distributor and left. So there was no contract they cared to even follow. If that distributor wanted to fight that, they would have to follow Canadagua to New York. Why should a small Montana businessman not have the protection of being able to settle a lawsuit in Montana. Our laws should protect Montanans.

Vote: Motion that HB 615 BE AMENDED failed 2-5. SENATORS BERRY, COCCHIARELLA, MCCARTHY, ROUSH AND SPRAGUE voted no.

Vote: Motion that HB 615 BE CONCURRED IN carried unanimously.
7-0

SEN. BOB KEENAN will carry the bill on the Senate Floor.

Amendments to House Bill No. 615
3rd Reading Copy

Requested by Senator Fred Thomas

For the Senate Committee on Business and Industry

Prepared by Stephan Maly
March 9, 1999 (2:43PM)

1. Title, line 5 and 6.

Following: "WHOLESALEERS" on line 5**Strike:** the remainder of line 5 through "DISTRIBUTERS" on line 6**Following:** "AMENDING"**Strike:** "SECTIONS"**Insert:** "SECTION"**Following:** "16-3-222"**Strike:** "AND 16-3-416"

2. Page 2, line 12 through page 3, line 20.

Strike: section 2 in its entirety

- END -

DATE 3-11-99

[illegible]



SENATE STANDING COMMITTEE REPORT

March 11, 1999

Page 1 of 1

Mr. President:

We, your committee on **Business and Industry** report that **House Bill 615** (third reading copy -- blue) be concurred in.

Signed:


Senator John Hertel, Chair

To be carried by Representative Bob Keenan

- END -

Committee Vote:

Yes 7, No 0.

SY

551157SC.srf

MONTANA SENATE
1999 LEGISLATURE

DATE 3-11-99 BILL NO. 12 B 615 NUMBER 1

MOTION: Amend H 0 615, HB 0615 02. as is

[illegible]



AN ACT REVISING THE MANDATORY PROVISIONS IN AGREEMENTS BETWEEN BREWERS OR BEER IMPORTERS AND BEER WHOLESALERS AND BETWEEN TABLE WINE SUPPLIERS AND DISTRIBUTERS; AND AMENDING SECTIONS 16-3-222 AND 16-3-416, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-3-222, MCA, is amended to read:

"16-3-222. **Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises.** All contracts, agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler ~~shall~~ must specifically set forth or contain the following:

(1) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer importer and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. ~~Said~~ The territory will must be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer importer.

(2) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

(3) that the brewer or beer importer recognizes that the wholesaler is free to manage his the wholesaler's business in the manner that the wholesaler ~~deems~~ considers best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands ~~he~~ that the wholesaler wishes to handle, and to determine the effort and resources that the wholesaler will exert to develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;

(4) a procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer or beer importer of ~~said the~~ deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct ~~said the~~ deficiencies, and that a reasonable period of time ~~shall~~ must be given the wholesaler for rectification of ~~said the~~ deficiencies prior

to any notice of intent to terminate;

(5) a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise;

(6) that all agreements between a brewer and a wholesaler are interpreted and governed by the laws of Montana;

(7) that in any dispute resulting in litigation between a brewer or a beer importer and a wholesaler, the litigation must occur in a Montana court, either federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced;

(8) that all agreements between a brewer or a beer importer and a wholesaler must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution."

Section 2. Section 16-3-416, MCA, is amended to read:

"16-3-416. Table wine distributor provisions. (1) A supplier or table wine distributor must have a written agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor.

(2) An agreement of distributorship must provide that:

(a) a supplier shall notify a table wine distributor in writing at least 60 days prior to termination of an agreement of distributorship unless a termination without notice is permitted as provided in 16-3-417. The written notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice, the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection.

(b) a supplier may not unreasonably withhold or delay approval of a sale or transfer of the ownership, management, or control of a table wine distributorship. However, a table wine distributor shall give a supplier no less than 60 days' prior written notice of any material change in ownership, management, or control.

(3) Within 60 days after entering into an agreement of distributorship, the supplier shall advise the department of the agreement by filing a copy of the agreement that must include the sales area or

areas designated for the table wine distributor.

(4) If a supplier terminates an agreement of distributorship under the provisions of subsection (2)(a), the table wine distributor subject to the termination is entitled to compensation for the laid-in cost of inventory. In the event of any termination of the agreement by the supplier other than termination for good cause or for any reason set forth in 16-3-417(3), the distributor is entitled to compensation for the laid-in cost of inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this section.

(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the best interest of the table wine brand concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5.

(6) All agreements of distributorship are interpreted and governed by the laws of Montana.

(7) In any dispute resulting in litigation between a supplier and a distributor, the litigation must occur in a Montana court, federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced.

(8) Agreements between a supplier and a distributor must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution.

~~(7)~~(9) A provision in an agreement of distributorship that is inconsistent with the requirements of this section is void."

- END -